

EXHIBIT 1

CHARLES STROW

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

CHARLES STROW individually and
On behalf of all other similarly
situated,

Plaintiffs,

vs.
B&G Foods, Inc.

Defendant.

Case No.: 1:21-CV-05104

Judge Steven C. Seeger

_____/

The Above-Captioned Video-Recorded Zoom Deposition of

CHARLES STROW

1:40 p.m. - 4:04 p.m. Central Standard Time

Thursday, December 15, 2022

REPORTED BY:

STEVEN POULAKOS, RPR

JOB NO: 220572

CHARLES STROW

The above-captioned video-recorded deposition of CHARLES STROW was held via Zoom videoconference on Thursday, December 15, 2022, commencing at 1:40 p.m., Central Standard time before Steven Poulakos, Notary Public.

REPORTED BY: Steven Poulakos, RPR

CHARLES STROW

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

SPENCER SHEEHAN, ESQ.

Sheehan & Associates, P.C.

60 Cutter Mill Road

Great Neck, NY 11021

ON BEHALF OF THE DEFENDANT:

DAVID KWASNIEWSKI, ESQ.

MATTHEW BORDEN, ESQ.

Braunhagey & Borden, LLP

351 California Street

San Francisco, California 94104

ALSO PRESENT: RICK RICHEY, THE VIDEOGRAPHER

CHARLES STROW

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December 15, 2022

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1 CHARLES STROW

2 A No, not whatsoever.

3 Q And you're represented by counsel here
4 today?

5 A Yes, sir.

6 Q And that's Mr. Sheehan?

7 A That's correct.

8 Q And where are -- and Mr. Sheehan is not in
9 the room with you? He's in another location; is that
10 correct?

11 A Yes, he is.

12 Q Okay. So do you have any other lawyers
13 representing you in this case?

14 A No, sir.

15 Q Have you ever heard of someone named Peter
16 S. Lubin?

17 A No, sir.

18 Q I take it you've never met anyone named
19 Peter S. Lubin?

20 A No, sir.

21 Q You never signed an engagement letter with
22 Peter S. Lubin?

23 A No. I have no idea who that is, sir.

24 Q You've never talked to Peter S. Lubin?

25 A No, sir.

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Q You didn't agree in writing for him taking any share of fees in this case, correct?

A Again, I don't know who he is, no, sir.

Q How about Francis R. Green, have you ever talked to him?

A No. I've never talked with Mr. Francis, no.

Q And I take it Francis R. Green, you've never signed any agreement with him, correct?

A No, sir.

Q And how about Patrick Austermuehle, do you know who that is?

A No. No, sir.

Q I'm going to show you a document. So this is going to be the first document that I show you.

Hopefully I will be able to do it in a decent way.

It's a little bit awkward sometimes on these Zoom depositions, so bear with me for one sec.

A Sure.

Q It's also compounded by the fact that I don't see very well. So I think I'm going to try to drop it into the chat. So did the document show up in the chat?

A Let me check.

1 CHARLES STROW

2 Q You don't have to do that because I'm going
3 to share screen with you, so you can see it. I'm more
4 asking for -- of your counsel, Mr. Sheehan.

5 MR. SHEEHAN: I see it and, yes, I'm going
6 to take a look at it even though I know you said that
7 you would drop it.

8 MR. BORDEN: Okay.

9 BY MR. BORDEN:

10 Q So can you see the document now, Mr. Strow?

11 A Yes, sir.

12 MR. BORDEN: Can we have this document
13 marked Exhibit 1, please, Mr. Court Reporter?

14 (A discussion was held off the record.)

15 (Strow Exhibit 1 was marked for purposes of
16 identification.)

17 BY MR. BORDEN:

18 Q Let me just identify the document for the
19 record. Exhibit 1 is a document entitled, motion to
20 withdraw and it's been filed in this case. So I'm
21 going to scroll down and you'll see it says Peter S.
22 Lubin and Patrick Austermuehle here -- hereinafter
23 referred to as movants seek leave of court to withdraw
24 as attorneys of record in this action for plaintiff,
25 Charles Strow, and it goes on.

1 CHARLES STROW

2 Do you see that, Mr. Strow?

3 A Yes, sir, I see that.

4 Q Did you see this document before it was
5 filed?

6 A I have not seen the document, no, sir.

7 Q Did you consent in writing to allow Patrick
8 S. Lubin and Patrick Austermuehle to withdraw as your
9 counsel?

10 A I don't know who they are, so I don't -- I
11 didn't speak with them, so --

12 Q And from your answer, I take it you don't
13 know whether this motion was granted or not?

14 A This is the first time I've seen anything
15 like this, so --

16 Q And do you have any idea why your counsel
17 withdrew?

18 A The only thing that I can see that I do
19 know on this is when me and Spencer I think filed
20 first, it was with J.M Smucker and I think the name
21 changed with the corporate maybe. That's the only
22 thing that I see different is now it's B&G, but I know
23 first we did do J.M. Smucker, I believe, is what my
24 first document paper says.

25 Q I understand, but in terms of these lawyers

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1

2 you have --

3 A I have --

4 Q -- you have no idea why they withdrew?

5 A Correct.

6 Q So I take it from -- you've read your
7 complaint in this case, right?

8 A Yes, sir.

9 Q And I take it from your complaint that you
10 bought the spray oil several times?

11 A No. I bought it one time.

12 Q When did you first review your complaint in
13 this case?

14 A Whenever it said the J.M Smucker. I
15 haven't looked at anything since then. Just when it
16 was first -- I think first filed I guess maybe back in
17 September area I believe it was, I think.

18 Q Did you review it before it was filed or
19 after it was filed?

20 A No. We had a discussion the night before I
21 believe it was filed.

22 Q And then you looked it over to make sure
23 that it was correct and accurate?

24 A To the best of my knowledge, yes. There
25 was a lot of stuff that I didn't understand with that,

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A Yes, sir.

Q Where were you?

A I was -- I believe I was at Jewel, Jewel
Osco which is our grocery store here. I guess I was
probably in the oil aisle is where I guess I was.

Q So you anticipated my next question which I
appreciate. How was it displayed? Was it just there
next to the other oils?

A It was actually -- Jewel has it propped up.
I don't know if they still do. They change stuff
around all the time, but Jewel has -- you had your more
natural like your coconut oils on the right-hand side.
Then they had the butter spray besides it and then they
had the vegetable oils kind of on the left-hand side.
So it looked more natural. It looked -- it had butter
on it. That's again all I -- that's all I use. That's
all I was raised with, so that was why I grabbed that.

I even -- I came home that night and I

think I made grilled cheese one night. And instead of
using butter, I sprayed the butter spray on the grilled
cheese. And I wish I wouldn't have done that because
what I know now, I just wish I wouldn't have done that.
So I'm just putting it in oil or something.

Q So you didn't like the grilled cheese when

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you ate it?

A It was all right. Just when you find out something is not what it portrays, that has a big issue with me, so --

Q Is that when you found out?

A No. That's not when I found out, no.

Q So it was performing like spray oil?

A It was performing like nonstick oil, correct.

Q And you didn't have any problem with the way it was working at the point in time when you first used it?

A The working part is not my issue, sir, no, sir.

Q Just to -- just to -- it did everything you expected out of a spray oil, correct?

A Correct, yes.

Q And when did you become dissatisfied with the product?

A I was -- I believe I was on Facebook and I was talking to some friends, whatever. And for some reason, I want to say Spencer's name was on Facebook and I came across it. And that's when I was reading about it and I was like what is this. So I pulled it

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up. I read about it. Then after I read about it, I actually done some Google and research and I was reading about this. And I was like you've got to be kidding me.

And that's when I actually -- I think I sat for maybe a day or so and I was like I'm going to go ahead and fill this out and contact him and see what the deal is with this. And the more I was researching, the more I was reading about it, that's when I was realizing that's not what it says it is. I never knew that, so --

Q So thank you for that. We'll talk more about the materials that you received from Mr. Sheehan and I appreciate that.

Just in terms of -- so you were using it for a period of time before Mr. Sheehan reached out and contacted you?

A Off and on, yes.

Q About how long was that?

A I mean, I still had the can for well over a year, year and a half at least. So I don't use it all the time, but I've I used it every so -- every now and then, but it lasted over a year I would say at least, so --

1 CHARLES STROW

2 Q And you had no reason to believe that it
3 didn't contain butter during that year and a half?

4 A I did not know that, yes. I never looked
5 at the ingredients whatsoever.

6 Q Okay. Going back to this first purchase,
7 you said it was on a shelf and there were some other --
8 was it next to other spray oils?

9 A Yes. It was all with the spray oils, but,
10 again, the way it was arranged was they had the butter
11 spray that was kind of close to the coconut oil, the
12 more natural oils. Then they had the vegetable oils
13 and the off brand stuff on the left-hand side over a
14 little bit. So that's when I was looking at things and
15 that's why I chose the butter spray because it stood
16 out and that was butter. That's what I bought it for,
17 so --

18 Q Sure. Were there other butter flavored
19 spray oils that were up there on the shelf at the time?

20 A Yeah. They all said butter. I forget how
21 they worded it. Buttery flavored -- flavored I believe
22 is what it said. It said butter flavored or butter
23 imitation, but they let you know that it was not
24 butter. This had nothing to do with that. It
25 literally said butter spray. And with technology these

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two completely different stories. And I'm not trying to stop people from buying this product. This product will be a good product. It's the labeling that I had an issue with. And I'm wholehearted about this. In my opinion, this is very misleading in my opinion because the front of the can does not match what the back of the can says.

The can on the front has a large picture. It's a large butter picture and it says largely butter. On the back of the can in little tiny writing is completely opposite of what the front of the can is portraying. And I'm not trying to get people not to buy this. I want the labeling to be correct to quit misleading people is what I want.

Q Okay. We'll get there too, but just to go back about this particular feature of the product, this comparison chart. Excuse me. In that period of time between the purchase and then the year, the year and a half when you got the message from Mr. Sheehan on your Facebook account, you didn't read any of this language and you didn't rely on this language and you're not claiming that you were injured by any of this language, correct?

A That is correct.

1 CHARLES STROW

2 Q And also just to be clear, when I said this
3 language, you understood me to be referring to the
4 language in Exhibit 2, correct?

5 A Yes, sir.

6 Q So I just dropped Exhibit 2 into the chat.
7 So you referenced earlier you use social media; is that
8 correct?

9 A I do, yes, sir.

10 Q Which social medias do you use?

11 A Mostly just Facebook. I have Snapchat. I
12 barely ever use that. I'm mostly a Facebook person or
13 I'm a local news person too.

14 Q And you said you first became involved in
15 this case when you received a solicitation from a
16 lawyer that went out to you through Facebook?

17 MR. SHEEHAN: Objection. That misstates
18 the record, but please continue, Mr. Borden.

19 BY MR. BORDEN:

20 Q So that's a good -- I don't know what --
21 from time to time, your lawyer may object and we didn't
22 talk about this when I was telling you how this process
23 works, but unless he instructs you not to answer, you
24 should answer the question. I believe that you've
25 probably forgotten the question at this point because

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we're talking back and forth and, you know, that's fine. That happens, but --

MR. BORDEN: Anyway, Mr. Court Reporter, do you mind reading back the question for Mr. Strow, please?

(Reporter read back the record as requested.)

THE WITNESS: In my opinion, I would not call it a solicitation, but, yes, I did -- I did see a -- an ad. It was him I believe asking if we -- if we had this product or if we ever purchased this product and if we knew what it had in it compared to what it says. And that got my attention and I started researching a little bit looking and comparing what it had and what it was portraying to me what I thought it had was completely opposite. So that was when I was made aware of that, correct.

BY MR. BORDEN:

Q So it's fair to say that you didn't intend to sue Smucker or B&G Foods until you received this solicitation from your lawyer, correct?

MR. SHEEHAN: Objection again to the -- what I believe to be misstating the record.

However, Mr. Strow, please answer.

THE WITNESS: Sure. Again, I don't -- I

CHARLES STROW

1
2 don't know how to say this. I kind of forgot the
3 question, but can you repeat the question for me? I'm
4 sorry.

5 BY MR. BORDEN:

6 Q Sure.

7 MR. BORDEN: Can you please read it back,
8 Mr. Court Reporter?

9 (Reporter read back the record as requested.)

10 THE WITNESS: That is partially correct.
11 Again, I didn't know anything was wrong with the
12 product. I didn't know they were misleading and
13 mislabeling until I read about that. That's what got
14 me into wanting to pursue this was the mislabeling.
15 It's not the product is bad. It's nothing to that
16 effect. It's the whole purpose of misleading the
17 labeling is what my issue is, so --

18 BY MR. BORDEN:

19 Q But it's fair to say that you had no intent
20 of suing my client until you received this
21 communication from your lawyer?

22 A I guess you could say that's correct, yes.

23 Q Is there any way that that's incorrect?

24 A No, sir.

25 Q And did you receive this communication from

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A I don't recall that, no. I just remember after researching a few things, I remember going back. I don't remember if it came back on my Facebook again or if went to that on Facebook. I don't recall. And I know I hit the sign up or something to that effect or whatever it was or contact me or whatever. I don't know what it said.

Q So what did you think that join this investigation -- what did you think join the investigation meant?

A That means to me that they are diving into what they're exactly saying that the butter does not contain butter spray as what it says on the front label is what I take as what probably most consumers do take it as. It's not portraying what it is. That's what I'm guessing to that, so --

Q And when you saw this, you understood that this was less of an investigation and more of an effort by your lawyer to recruit someone to bring a lawsuit?

MR. SHEEHAN: Objection, leading question.

However, Mr. Strow, please answer.

THE WITNESS: Yes, sir. No. I did not think that, no.

BY MR. BORDEN:

1 CHARLES STROW

2 Q So you at least understood that this was
3 asking you to be a plaintiff in a lawsuit against a
4 company that sells spray, correct?

5 A No, I had no clue. No, sir.

6 Q And I take it you subsequently talked to
7 Mr. Sheehan after -- after -- you responded to this
8 message that's in Exhibit 3, correct?

9 A Yes, I did.

10 Q And what kind of response did you make?
11 Was it like a button that you clicked on like that sign
12 up button down here or was there something else?

13 A I'm not going to say that it was contact
14 us, but I'm not for sure. But I hit that and it led me
15 to a document that I filled out. And it was just my
16 name, address and then it asked my history with the
17 product or I don't know how it was -- I don't know
18 words, but -- and then I submitted it to them.

19 Q So after clicking on this, did you become
20 part of any type of investigation?

21 A My information went to him. I don't know
22 what it was for. I had -- I was guessing that it was
23 for an investigation of the product. Nowhere on here
24 does it say class action. Nowhere on here does it say
25 lawsuit, nothing to that effect. I didn't know who he

1 CHARLES STROW

2 was at the time either, but I was just going on based
3 on what the ad says. I was very, very upset because
4 again I was misled and I was unhappy with that, so --

5 Q Are you aware of any testing that's been
6 done as part of this investigation?

7 A No, I'm not.

8 Q Are you aware of any survey that's been
9 done as part of this investigation?

10 A No, I'm not.

11 Q Can you just look at the ingredients and
12 see that there's no butter?

13 A You can see that it's not portrayed of what
14 the front of the can says, yes.

15 Q Are you aware of any app other than simply
16 reading the ingredients that was part of this
17 investigation?

18 A I'm sorry. What was your question? You
19 broke up. I'm sorry.

20 Q I'm sorry. Are you aware of any app other
21 than just simply reading the ingredients of the product
22 and comparing it to what was on the front of the label
23 that was part of this investigation?

24 A Did I know that?

25 Q No. I'm trying -- and I'm sorry and --

1 CHARLES STROW

2 A I apologize for not understanding. I'm
3 sorry.

4 Q No. You don't need to apologize. I want
5 to make sure that you understand because that's how we
6 make sure that we're getting accurate testimony. I'm
7 seeing in Exhibit 3 that there's this request to join
8 the investigation and I guess my question was: You
9 know, are you aware of any part of this investigation
10 that was done other than simply, you know, looking at
11 the ingredients on the one hand, looking at the front
12 of the label on the other hand and saying, hey, the
13 front of the label says butter, the ingredients don't
14 say butter, something's going on?

15 A When I signed up for that, it was -- it was
16 to make myself aware of what this situation was and
17 what it was -- what was going to happen next. That's
18 the reason I hit that. There was nothing ever
19 discussed with anything of -- and I'm not aware of any
20 testing that was done afterwards because his office
21 contacted me directly afterwards. So I spoke with his
22 office directly. So, no, I'm not aware of any tests
23 that were done, no, sir.

24 Q And, yeah. I'm just including tests or any
25 other things that, you know, could be part of an

1 CHARLES STROW

2 know it asked my name, my phone number, my address.

3 Q Okay. And I'll just call it kind of a
4 intake form. Is that a fair characterization of it?

5 A I guess. I don't know why it's called
6 intake form. I don't know what to call it. I have no
7 clue.

8 Q Okay. I'll just call it a form. So you
9 get the form from your lawyer. You fill it out. What
10 happened next in terms of your relationship with your
11 lawyer?

12 A I got -- I think I got an email, but I
13 don't recall. I don't recall what it said. I don't
14 remember, but I remember I spoke with his paralegal
15 within a couple of weeks, I believe, maybe not even
16 that long.

17 Q What was his paralegal's name?

18 A I don't recall. She was a female. I know
19 that. She might not even be a paralegal. I'm guessing
20 at that. It was a lady that worked in his office,
21 so --

22 Q And what did she say on the phone call?

23 A I don't recall word-for-word at all.

24 Q Do you recall --

25 A Go ahead.

1 CHARLES STROW

2 Q Go ahead.

3 A I believe I was talking about the next
4 steps in the process, so what they were needing to do
5 and wanted my opinion on things. And that's I think --
6 I think that's when I found out there was a class
7 action that possibly was going to happen.

8 Q Is there anything else that you can
9 remember that you said or she said during this
10 conversation with this person from Mr. Sheehan's
11 office?

12 A I literally do not remember that
13 conversation. I just remember it was a lady that I
14 spoke with. I don't remember that conversation
15 whatsoever.

16 Q And after you had this conversation with
17 her, what was the next step?

18 A I didn't hear from anything for a while.
19 And then if I'm not mistaken, maybe Mr. Sheehan called
20 me. I don't recall. I don't remember, so --

21 Q So you had put your contact information
22 into the form?

23 A Correct.

24 Q And when you had the conversation with
25 someone from his office, this woman called you; is that

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convenient for me. That was the reason -- one of the reasons why I chose that. It's just more convenient, yeah.

Q And were you buying my client's butter for the nutrient content?

A No. I only was buying it for butter. That was the only -- the wholehearted reason.

Q Why weren't you concerned about the nutritional content of the product?

A That's something I don't look at. I usually try to buy the same things over and over again. If I was worried about that, I would have been looking at the back of the can. I just -- butter is what I'm -- what I was raised with. Butter is all I've known. When I saw that, I was comfortable with that because that's what I was looking at, yeah.

Q I mean, you know how to look at the nutritional facts on butter, right?

A I never do. I never have, but, yes, I do.

Q Right. There's like a little nutrition facts panel either on the side or the back depending on the product?

A Correct.

Q And how about calories, do you care about

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calories?

A I don't ever look at those on cans. Again, I make -- a lot of my things are homemade, so I don't ever look at stuff like that. I don't buy canned stuff. I don't buy stuff out of boxes. I try to make my stuff homemade. So I don't ever look at any kind of values on anything that I buy.

Q Okay. I'm going to show you another document hopefully.

MR. BORDEN: So let's mark this Exhibit 4, please.

(Strow Exhibit 4 was marked for purposes of identification.)

BY MR. BORDEN:

Q I'll share my screen with you. Can you see it?

A Yes. I can see it now, yes, sir.

Q Exhibit 4 for the record is labeled Crisco. It's an image of Crisco butter flavored -- naturally and artificial flavored no-stick spray.

Do you see that?

A If I look closely, I can -- I can't even read the middle part between the butter and no-stick. I don't know what that says. I cannot read that at

1 CHARLES STROW

2 all. Maybe if I zoom in, yeah, then I can read it,
3 yes.

4 Q Okay. Good. And let me just ask you is
5 this a true and correct copy of the label of the
6 product that you purchased?

7 A To my knowledge, yes.

8 Q So -- and this has the image of the pancake
9 with the pat of butter on it that you talked about?

10 A Yes, correct.

11 Q And then down here, you see some
12 nutritional information, but you didn't look at that,
13 correct?

14 A That is correct, yes.

15 Q So let me show you another document. We'll
16 make this Exhibit 5.

17 (Strow Exhibit 5 was marked for purposes of
18 identification.)

19 BY MR. BORDEN:

20 Q Do you have Exhibit 5?

21 A Yes, sir, I do.

22 Q And it says, reasons for buying the product
23 on top and then there's some categories below.

24 Do you see that?

25 A Yes, sir, I do.

1 CHARLES STROW

2 right. That should be good.

3 MR. SHEEHAN: Yeah. Let me download it
4 again.

5 MR. BORDEN: Okay. Sorry for the delay,
6 folks.

7 THE WITNESS: No problem.

8 BY MR. BORDEN:

9 Q Okay. So I believe you talked about some
10 other kind of spray oil products that you bought before
11 you bought my client's product. Do you remember what
12 any of those were?

13 A One is just the coconut oil. That's all it
14 is. It's just coconut oil. I think the other one is
15 like an extra virgin olive oil that's in a spray, I
16 believe. That's the only two that I've used, so --

17 Q And after you were contacted by Mr. Sheehan
18 and you learned that this product doesn't have butter,
19 did you continue to use the spray oil that my client
20 sells?

21 A Negative, no.

22 Q Did you throw out the can that you had or
23 did you save it?

24 A I threw it out. I don't save cans.

25 Q And it wasn't finished? You still had some

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but I'm going to get a little bit more detail from you.

Is it your claim that you suffered some kind of injury

from buying this product?

A I didn't suffer a natural injury, no.

Q We've been going for about an hour. Do you want to take another break? I don't know -- let's go off the record and talk for a sec.

THE VIDEOGRAPHER: 3:59 p.m. central standard time. We're off the record.

(Deposition recessed at 3:59 p.m.)

(Deposition resumed at 4:02 p.m.)

THE VIDEOGRAPHER: 4:02 p.m. central standard time. We're back on the record.

MR. BORDEN: So, Mr. Strow, we just had a discussion off the record and what we decided is given the lateness in the day and obligations that you have and the fact that, you know, we started this deposition late due to my own fault, we're going to continue the deposition to another time that all of us will find convenient and -- and you're free to go take care of what you need to take care of.

THE WITNESS: I appreciate that. And I apologize. I feel like it's my fault, so I apologize.

MR. BORDEN: No problem. The lawyers will

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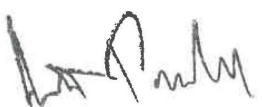
CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

I, Steven Poulakos, registered Professional Reporter, the officer before whom the foregoing proceedings were taken, do hereby certify that the foregoing transcript is a true and correct record of the proceedings; that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 28th day of December 2022.

My commission expires:

August 20, 2023



STEVEN POULAKOS, RPR
NOTARY PUBLIC IN AND FOR
THE STATE OF MARYLAND